IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

WP(C).No. 29653 of 2006(S)

OA.464/2005 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS/RESPONDENTS IN THE O.A:
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1. **UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF INFORMATION & BROADCASTING, NEW DELHI.**

2. **THE DIRECTOR GENERAL OF DOORDARSHAN, DOORDARSHAN BHAVAN, COPPERNICUS MARG, MANDI HOUSE, NEW DELHI.**

3. **THE DIRECTOR, PRASAR BHARATHI, (BROADCASTING CORPORATION OF INDIA), DOORDARSHAN KENDRA, THIRUVANANTHAPURAM.**

BY ADV. SRI.N.N.SUGUNAPALAN,
SRI.S.SUJIN.

RESPONDENT/APPLICANT IN THE O.A:

R.LATHA, W/O.LATE RAMARAJ,
FLOOR A, IOB BUILDING, MUKKOLA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.V.S.NAMBOOTHIRY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.29653/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORIGINAL APPLICATION IN O.A. NO. 464/2005 FILED BY THE RESPONDENT BEFORE THE CENTRAL ADMINISTATIVE TRIBUNAL, ERNAKULAM.

EXT.P.2: COPY OF THE OBJECTION RAISED AS A REPLY TO THE O.A. 464/05 DTD. 19/09/2005.

EXT.P.3: COPY OF THE REPLY STATEMENT FILED ON BEHALF OF THE RESPONDENTS 1 TO 3 DTD. 16/03/2006.

EXT.P.4: COPY OF THE REJOINDER SUBMITTED BY THE RESPONDENT DTD. 15/11/05.

EXT.P.5: COPY OF THE MISCELLANEOUS APPLICATION IN O.A. 464/05 SUBMITTED BY THE PETITIONER DT. 15/12/2005.

EXT.P.6: COPY OF THE ORDER IN O.A. NO. 464/2005 DTD. 27/07/2006.

EXT.P.7: COPY OF THE SCHEME FOR COMPASSIONATE APPOINTMENT ISSUED VIDE O.M. DTD. 09/10/1998.

EXT.P.8: COPY OF THE SCHEME FOR COMPASSIONATE APPOINTMENT ISSUED VIDE OM DTD. 03/12/1999.

EXT.P.9: COPY OF THE O.M. NO. 14014/19/2002-ESTT. (D) DTD. 05/05/2003 (RELEVANT EXTRACT).

//TRUE COPY//

prv.

J.B. Koshy & T.R. Ramachandran Nair, JJ.

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W.P.(C).NO.29653 of 2006-S

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Dated this the 9th day of March, 2007

JUDGMENT

Koshy, J.

Petitioner is questioning Ext.P6 order of the Central Administrative Tribunal. The first respondent herein applied for compassionate appointment as her husband, while working as Master Technician at Doordarshan Kendra, died on 28.3.1999. There were three minor daughters who were all studying at that time. By letter dated 15.3.2000 the petitioner informed the respondent that Director General, Doordarshan has decided for her appointment in Group 'C' post of L.D. Clerk in Doordarshan. The applicant thereafter received another letter which is quoted as follows:

> "With reference to above, it is stated for kind information that the Competent Authority has decided in principle to appoint you in a Group C post of Lower Division clerk in Dordarshan on compassionate grounds. Your name has been noted in the pending waiting list of compassionate cases. Offer of appointment will be issued to you in future, when your case matures subject to availability of vacancies which may occur in future against 5% quota prescribed for the purpose."

On 8.6.2005, she received a letter stating that since three year period has elapsed, her request for compassionate appointment is treated as closed. Therefore, she approached the Central Administrative Tribunal. The

eligibility with regard to the dying in harness scheme, compassionate appointment, etc. are satisfied in this case. Petitioner has no case that her financial position improved. The only question is whether merely because within the three years she was not able to get an appointment, her right can be denied. It is true that compassionate appointment is an exception to the general rules. It is to save the family of the deceased employee from a crisis. But appointment can be made as per the rules in the 5% quota earmarked for the purpose and that too, only if the dependant is qualified to be appointed. The qualification and eligibility are not disputed. Immediately within a short time of the death of her husband, she applied. So, there is no time bar for the application. Her name was kept open for three years. But thereafter it was shut down.

The petitioners mainly rely on the circular dated 5.5.2003 (Ext.P9) which is incorporated in the Scheme, which reads as follows:

> " The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years, subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if Compassionate Appointment is not possible to be offered to the applicant, his case will be finally closed, and will not be considered again."

It is contended that only because of the above provision, she was denied

compassionate appointment. To counter this, the respondent relied on Annexure A7 produced before the Tribunal which is issued by the petitioners themselves on 19.4.2004 which reads as follows:

> "With reference to above, it is stated for kind information that the Competent Authority has decided in principle to appoint you in a Group C post of Lower Division clerk in Doordarshan on compassionate grounds. Your name has been noted in the pending waiting list of compassionate cases. Offer of appointment will be issued to you in future, when your case matures subject to availability of vacancies which may occur in future against 5% quota prescribed for the purpose."

It is the contention of the respondent that as a special case the matter was considered and the above letter dated 19.4.2004 was issued. The above letter was issued after issuance of Ext.P9 Office Memorandum containing the instructions incorporated in the manual of the Scheme. It is also further contended that the claim of the respondent is not hit by Ext.P9 because Ext.P9 scheme came after respondent's case was considered and her eligibility was determined and offer was given that she will be considered for appointment subject to the vacancies arising. Therefore, it is contended that Ext.P9 is not applicable to her and her case was considered before Ext.P9 and promise was given. There is also no contention that even thereafter, after the period of three years, the economic conditions of the respondent improved or the three minor children got any employment.

In the above circumstances, considering the fact that the claim of the respondent was considered and promised before Ext.P9 was issued, we are of the opinion that no grounds are made out to interfere with Ext.P6 order on the facts of this particular case in a petition under Article 227 of the Constitution of India which is discretionary in nature. Hence the writ petition is dismissed. However, three months period mentioned in the order of the Tribunal is extended by another five months from today.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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